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DAVID S MACKENZIE
HORTECH INC
P O BOX 533
SPRING LAKE MI 49456

In re Application of
Christopher Howe
Serial No.: 09/514,930
Filed: February 28, 2000
Attorney Docket No.:

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: PETITION DECISION
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This is in response to the informal petition under 37 CFR 1.181, filed September 25, 2003, requesting withdrawal of abandonment based on timely filing of a reply. The delay in acting on this petition is regretted.

A review of the file history shows that the examiner mailed an Office action to applicant on January 23, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the application became abandoned by operation of law although a Notice of Abandonment has yet to be mailed. Applicants state that a reply to the Office action was submitted on March 23, 2003, and provide a US Postal Service date stamped Certified Mail receipt evidencing mailing of a communication to the Office on March 23, 2003. The receipt identifies the addressee, but not the contents of the communication. However it is presumed to be the reply, a copy of which is supplied with the petition, that was filed for this application. The date of mailing appearing on the receipt for Certified Mail cannot be considered the date the reply was received in the Office, however it is more than one month prior to the due date for reply and normal Postal Service processing would have delivered the reply to the Office in a less than a month. In the future, applicant is encouraged to use the Certificate Of Mailing procedure set forth in 37 CFR 1.8 as this will establish a date of receipt of a reply in the Office. Absent such certification, the date of receipt is the Mail Room receipt date stamped on each piece of correspondence received, not the date it was deposited with the US Postal Service, either as regular mail or Certified Mail. In view of the evidence presented, the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

The reply will be entered and the application will be forwarded to the examiner for further consideration.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 703-872-9306.



Bruce M. Kisliuk
Director, Technology Center 1600